IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

MELVIN J. MILLER, JR.,

Plaintiff,

v. **Civil Action No.** 3:17-cv-03727
(Removed from the Circuit Court of Cabell County Civil Action No. 17-C-362)

WESTFIELD INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant Westfield Insurance Company ("Westfield"), hereby gives notice of the removal of this action from the Circuit Court of Cabell County, West Virginia, Civil Action No. 17-C-362, to the United States District Court for the Southern District of West Virginia. In support of this Notice of Removal, Defendant Westfield states as follows:

1. Westfield is the only named Defendant in that civil action filed by Melvin J. Miller, Jr. in the Circuit Court of Cabell County, West Virginia, styled Melvin J. Miller, Jr., Plaintiff, v. Westfield Insurance Company, Defendant, Civil Action No. 17-C-362;

2. Copies of the Summons and Plaintiff's Complaint were served on Westfield through the Secretary of State on July 5, 2017, and this action is being removed within thirty (30) days of service of Plaintiff's Complaint;

3. Copies of the Summons, Plaintiff's Complaint and the docket sheet for the Plaintiff's action in the Circuit Court of Cabell County, which constitutes the entirety of the papers filed in this action to date are attached as **Exhibit A**;

4. This action is a civil action in which this Court has jurisdiction pursuant to 28 U.S.C. §§1332 and 1441, in that;

a. Plaintiff Melvin J. Miller, Jr. is a resident of Cabell County, West Virginia (see Complaint, Paragraph 1);

b. Westfield is a foreign corporation, with its principal place of business in Westfield Center, Ohio;

c. Westfield may elect to defend the Plaintiff's action in the name of Robert Gillem, who was the other motorist involved in the accident with the Plaintiff Melvin J. Miller, Jr., but with whom the Plaintiff has reached a settlement and, as such, Robert Gillem would be a nominal party whose residency is immaterial to the diversity of citizenship between the parties to this action;

d. The amount in controversy in this action exceeds the sum of $75,000, exclusive of interest and costs, as the Plaintiff's Complaint seeks recovery of underinsured motorist coverage benefits with limits of $500,000.00; damages for alleged damages for bodily injuries, for which Plaintiff has indicated he has incurred medical bills exceeding $22,424.36 resulting in alleged permanent injuries, and residual pain; damages for alleged breach of contract, and common law bad faith, and violations of the West Virginia Unfair Trade Practices Act; and for punitive damages.

5. Concurrent with this filing, Westfield has transmitted a copy of this Notice to the Circuit Clerk of Cabell County, West Virginia, thereby providing notice to the Circuit Court of the removal of this action.

WHEREFORE, Westfield Insurance Company respectfully requests that this case proceed before this Court as an action properly removed from the Circuit Court of Cabell County, West Virginia.

WESTFIELD INSURANCE COMPANY

By counsel,

/s/ Brent K. Kesner

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WESTFIELD INSURANCE COMPANY,

Defendant.

CERTIFICATE OF SERVICE

I, Brent K. Kesner, counsel for Defendant, do hereby certify that on the **31st day of July, 2017**, I electronically filed the foregoing **NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed, by United States Postal Service, the document to the following:

Jeffrey E. Hood, Clerk
Cabell County Circuit Court
P.O. Box 545
Huntington, WV 25710-0545

Amy C. Crossan, Esq.
Bouchillon, Crossan & Colburn, L.C.
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Huntington, WV 25701

/s/ Brent K. Kesner

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